

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: August 09, 2016*
Judgment Delivered on: August 17, 2016

+ **MAT.APP.(F.C.)31/2014**

SMT.PARVEEN Appellant
Represented by: Mr.Pradeep Kumar Sharma,
Advocate with Mr.Niteshwar
Singh, Advocate

versus

SH.HUKUM SINGH Respondent
Represented by: Mr.Siddharth, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J.

1. This appeal has been preferred by the appellant/wife impugning the judgment and decree dated January 15, 2014 passed by the learned Judge, Family Courts, Dwarka whereby her marriage with the respondent/husband has been dissolved.
2. A petition under Section 13(1)(ia) of Hindu Marriage Act for dissolution of marriage was filed by the respondent/husband before the family Court which was allowed granting a decree of divorce on the ground of cruelty.
3. It is admitted case of the parties that they got married on February 28, 1994 as per Hindu rites and customs. The parties were blessed with three daughters. The eldest one was born on December 07, 1994, second daughter was born on December 21, 1996 and the third daughter was born on August

30, 2004. While the appellant was employed as a Teacher (TGT) in Government School, the respondent was employed as Food Inspector in Directorate of Prevention of Food Adulteration, Govt. of NCT of Delhi. The matrimonial life was smooth till the year 2002. The differences arose when the appellant along with her husband purchased Flat No.175 in Sector-1, Pocket-1, SFS Flats, Dwarka and the parents of the appellant also purchased a flat at the same place just opposite their house i.e. Flat No.265, Pocket-1, Sector-1, DDA, Dwarka, New Delhi.

4. It appears that the respondent/husband felt that his privacy had been intruded by his in-laws and that his wife was under the influence of her parents which created bitterness in their relations. There was an issue over the ownership of that flat also for the reason that the flat purchased by the husband was in his name after raising some loan from his parents and also availing home loan from SBI for which he was paying EMIs. The respondent/husband tried to resolve the issue by furnishing an undertaking dated October 30, 2006 on a stamp paper that he would sell that flat and after repaying the home loan would purchase another flat in joint name with his wife.

5. Certain complaints were made by a NGO – All India Slum Rehabilitation and Research Foundation Committee, Mumbai to the police as well to the department of the respondent/husband with copy to National Human Rights Commission, Commissioner of Police, Department of Administrative Reforms and Public Grievances and Ministry of Food Process Industries containing allegations that respondent/husband was harassing his wife for dowry and compelling her to go for abortion. He was also termed as habitual gambler, drunkard, having extra-marital affairs.

6. On the said complaint respondent/husband was served with the show cause notice dated July 30, 2004 which was replied by him on September 02, 2004. The complaints made to the police were also referred to CAW cell which also resulted in initiation of proceedings against the respondent/husband. The appellant/wife made another set of complaints on June 04, 2005 to various authorities including CAW cell.

7. Fed up with the complaints made to various authorities, the respondent/husband lodged DD No.50-B at PS Dabri on November 03, 2004 and apprehending his false implications in criminal cases, started living separately. The background was the threats given by his wife to commit suicide along with children.

8. The respondent/husband started living separately in a rented accommodation but thereafter due to intervention of friends and family and the assurance given before the police that the parents of the appellant/wife would not interfere in their matrimonial life, they started living together with effect from February 06, 2005. The situation was normalized temporarily but again due to interference by his in-laws, the respondent/husband left that flat under written intimation to PS Dabri vide DD No.26-B dated April 25, 2005. Since then the respondent/husband had started residing separately in rented accommodation. However, it turned out to be no solution to his problems as various calls to the office of the husband were made speaking ill about him to his officers.

9. This compelled the respondent/husband to seek dissolution of marriage on the ground of cruelty.

10. The divorce petition has been duly contested by the appellant/wife. In the written statement and the evidence by way of affidavit she raised the

following defences:-

- (i) At the time of purchase of flat in Dwarka, she had given up ₹1.55 lakhs in cash and ₹50,000/- by cheque on the assurance that the flat would be purchased in joint name but it turned out to be only in the name of respondent/husband.
- (ii) The cause of disturbed family life is attributable to the birth of three daughters and desire of the respondent/husband to have a male child for which he was trying to get rid of the appellant/wife so as to re-marry and have a son.
- (iii) Gross negligent conduct towards the three daughters to the extent that without making any payment of school fee he used to procure the receipts to show that he was paying the tuition fee.
- (iv) The appellant/wife was compelled to lodge a complaint through NGO - All India Slum Rehabilitation and Research Foundation Committee due to the cruel behaviour of the respondent/husband having no other option but to report the matter to various authorities.
- (v) Proceedings under Section 107/150 Cr.P.C. against the respondent/husband were also under the compelling circumstances.
- (vi) The inquiry proceedings against the respondent/husband were not due to the complaints made by her but because of his inefficiency.
- (vii) The respondent/husband has deserted his wife and daughters and he cannot be allowed to have advantage of his own wrongs especially when he had been treating the appellant/wife with cruelty for giving birth to daughters.
- (viii) The appellant/wife had made numerous complaints to various authorities only with a view to ensure that her husband remained with her

and the children.

11. The learned Judge, Family Court dealt with the pleas taken by the appellant/wife in her written statement as well during her deposition by way of affidavit before the Court and held that most of the pleas taken in the written statement were false. The learned Judge, Family Court has observed that the incident with the Bengali girls was neither suggested to the respondent/husband during his cross-examination nor deposed in her affidavit Ex.PW2/A. It was also held that there was no pleading in the written statement that after the birth of the second daughter, the respondent/husband wanted to re-marry to have a son. There was no pleading that she was ever asked or compelled by her husband to leave the job. The issue of the flat that it was to be purchased in joint name and the undertaking furnished by the respondent/husband to buy another flat in joint name was tried to be resolved by the undertaking of the respondent/husband to crease out the differences. The learned Judge, Family Court also held that in the written statement there was no plea of quarrel between the parties since the inception of their marriage or she being harassed since beginning.

12. The learned Judge, Family Court has examined the averments made in the written statement as well in her deposition that she did not doubt the character of her husband and had filed the complaints only with an intent to bring back her husband and observed that such conduct amounted to mental cruelty. The learned Judge, Family Court has also examined the issue of the husband leaving the house on two occasions i.e. on November 05, 2004 and April 23, 2005 and observed that respondent/husband might be under the apprehension with regard to his personal safety or being falsely implicated by his wife in criminal cases.

13. In para 51 of the impugned judgment, the learned Judge, Family Court has concluded as under:

'51. The petitioner has therefore, been able to prove that he has been subjected to mental cruelty by the respondent on account of following acts:

- (i) False allegations of petitioner's desire to have a son;*
- (ii) False allegations of petitioner intending to remarry in order to be get a son;*
- (iii) False allegations of taking the respondent to tantrik for be-getting a son;*
- (iv) False allegations of petitioner making her undergo 7-8 abortions in order to have a son;*
- (v) False allegations of petitioner having undue familiarity with neighbours;*
- (vi) False complaints containing slanderous allegations against petitioner, to his department, to the police and various other authorities; and*
- (vii) Admission of respondent that she had made these complaints with an intent to get back the petitioner.'*

14. Finding it to be a case where the respondent/husband had been able to prove that he was subjected to mental cruelty, a decree of divorce under Section 13(1)(ia) of Hindu Marriage Act was granted.

15. In the written submissions filed by the appellant/wife, the decree of divorce has been assailed mainly on the following grounds:

- (i) In respect of the incident having taken place in the year 2004-2005, the petitioner for divorce was filed in the year 2008.

- (ii) The grounds on which divorce has been granted were not proved.
- (iii) Learned Judge, Family Court failed to take note of the cross examination of PW-1 i.e. the respondent/husband wherein he stated that he did not know whether the appellant/wife had made any complaint against him to his department or some other authorities and that he admitted it to be correct that on the basis of said complaint no departmental action was taken against him, which shows that this fact came to his knowledge at a later date.
- (iv) There are material contradictions in the testimony of the respondent/wife on the issue of complaint made to his office and other authorities being in his knowledge or not and whether that resulted in lowering his reputation as no departmental action was taken against him.
- (v) The divorce petition was filed with malafide intention on the basis of concocted story and without there being any ground of cruelty being established.
- (vi) The respondent/husband neglected his family consisting of his wife and three daughters aged about 11 years, 9 years and 1 year and left the house without informing the family which is admitted by him also. Thus, it was the respondent/husband who was neglecting the family.
- (vii) The funeral of father of the respondent/husband was attended by her alongwith her elder daughter was established by her and so far as funeral of his mother was concerned she was never informed.
- (viii) There is no evidence of her parents taking any financial assistance from them or had any intention to grab their flat.
- (ix) There was no major issue involved as established from the statement of their daughter RW-1 Ms.Khyati Meena who has stated that the dispute

was only on 'petty issues' due to misunderstanding.

16. We have reappreciated the evidence to ascertain whether on the basis of material before the learned Judge Family Court, the respondent/husband being subjected to cruelty has been proved by him.

17. The nature and substance of the complaints made before various authorities including complaints to police, initiation of proceedings under Section 107/150 CrPC have not been disputed by the appellant/wife. She comes with an explanation in the written statement itself in para 15 which reads as under:-

'15.The respondent (appellant herein) made several complaints to several authorities only with a view that the petitioner (respondent herein) should remain with the respondent (appellant herein) alongwith her children happily but no male child was born and due to this reason the petitioner is trying to get rid from the complaint the respondent (appellant herein) and wants to arrange for second marriage.....'

18. In the decision reported as 19 (1981) DLT 64 Shakuntala Kumari v. Om Prakash Ghai it has been held that a false complaint by the wife to the husband's employer would amount to mental cruelty. The relevant paragraph of the report is extracted as under:

'A false complaint of this nature to an employer would certainly amount to mental cruelty. It would bring down the employee, in the eyes of his employer, and would reflect on his career and promotional opportunities. This would certainly play on his mind and affect his mental peace.

A Government servant is expected to maintain a reasonable and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanours...'

19. In another decision reported as 1986 (1) HLR 625 Vinod Kumar

Sharma v. Nutan Sharma, it was held as under:

‘The court have had occasion to consider the effect of complaints made to the employer, to persons in authority, and to the police, in F.A.O. No 124/84 and Shakuntala Kumari v. Om Parkash Ghai (1) 1981 DMC 25; N.G. Dastane v. S. Dastane MANU/SC/0330/1975 : [1975]3SCR967 ; Lajwanti Chandhok v. O.N. Chandhok (II) 1981 DMC 97; Kiran Kapur v. Surinder Kumar 1982 RLR 37 ; Sharda Nand Sharma v. Kiran Sharma MANU/DE/0477/1985 : 28(1985)DLT32 ; Girdhari Lal v. Santosh Kumari I (1982) DMC 180; and Jorden Dlendoh v. S.S. Chopra I (1982) DMC 224.

Such complaints, which are found to be baseless and to have been made by one of the spouses, have in these cases led to a finding of cruelty against the person complained against. I see no reason why a complaint by a person other than the spouse, who has identified himself with the spouse on whose behalf or at whose behest he has complained, should not be equated to the spouse, and the act of such a person be not deemed to be the act of the spouse. Here the person complained against was the husband. I note from the judgment of the court below that none of these judgments have been noticed by him, and he is of the view that these complaints do not amount to cruelty.

In view of the aforesaid judgments of this Court, and of the Supreme Court there has to be a finding of cruelty by the wife towards the husband. She made complaints or got the complaints made to the employers and the police which were found to be baseless on enquiry. Cruelty of the wife being established, the husband would be entitled to a divorce on that ground.’

20. We would confine ourselves only to three major accusations by the appellant/wife against the respondent/husband to examine as to whether the appellant/wife was victim or the respondent/husband was subjected to mental cruelty:

- (i) The appellant/wife being subjected to cruelty for giving birth to three daughters and desire of the respondent/husband to remarry and have a son. Subjecting her to undergo frequent abortions (7-8 times) as well taking her to a *Tantrik* for begetting a son compelling her to quit the job
- (ii) Betrayal by the respondent/husband by purchasing a flat in his own name instead of joint name with his wife.
- (iii) Deserting his wife and daughters by shifting to a rented accommodation and thereby avoiding his responsibilities as a husband and father.

21. Admittedly the parties got married on February 28, 1994 and first daughter was born in the same year on December 07, 1994. Second daughter was born on February 21, 1996 and third daughter was born on August 30, 2004. Though not pleaded in the written statement, the respondent/husband was suggested during his cross examination that in his 'lust' to have a male child he compelled his wife to undergo abortion 7-8 times. The appellant/wife is a Teacher in a government school. The medical record regarding abortion or the leaves availed by her in this regard was not produced. Her defence that she was even subjected to Sonography Test and then compelled to abort the female foetus, has also not been proved by producing record from the concerned nursing home where Pre-natal Sex Determination Test was conducted to ascertain the sex of the foetus and duration of pregnancy at that time. The fact that she has given birth to a female child in 2004 indicate that the parties might be having a desire to have a male child. This could be the reason that another chance was taken after about eight years of the birth of second daughter. Birth of third daughter in the year 2004 proves that the appellant/wife was never

compelled to undergo PNDT/abortion just for the reason that she might be carrying female foetus. The fact that during her cross examination she admitted of only one abortion in September, 1997 during the period 1996 to 2004 i.e. the gap between the birth of two younger daughters is sufficient to record that false allegations were made against the respondent/husband that he compelled his wife to undergo 7-8 abortions or there was any issue over the birth of daughters in the family or he desired to remarry to have a male child.

22. The contention raised by the appellant/wife before this Court that she was even compelled to quit the job was not even pleaded in the written statement.

23. In her cross examination the appellant/wife has admitted that on the birth of second daughter the mother and the sister of the respondent/husband came to reside with her for two years. This rather shows that to enable the appellant/wife to join duty and to take care of two young daughters they stayed at her house and birth of two daughters was never an issue in the family.

24. Her statement that on the birth of two daughters her father-in-law wanted to throw her out of matrimonial home to get the respondent/husband remarried is also falsified from the above fact. She has rather admitted in her cross examination that no name of any specific woman came before her with whom remarriage was contemplated. It will not be out of place to mention here that the parties being in government job, could not have entered into second marriage during the subsistence of first marriage thereby risking their government jobs.

25. It may also be noted here that the third daughter was born on August

30, 2014 whereas appellant/wife was allegedly taken to *Tantrik* in January, 2003 and October, 2004 to fulfil his desire to have a male child despite being objected by her. There is no evidence of any conception in the year 2003. Abortion was in the year 1997. Youngest daughter was born in August, 2004 and in October, 2004 the third daughter must be two months old so where was the question of taking the wife to *Tantrik* to have a male child when the parties had a female child born just two months back.

26. The appellant/wife and respondent/husband both being in government job were governed by Conduct Rules. Acquisition of any immovable property was required to be intimated by them to their respective departments. The appellant/wife was guarantor to the home loan from SBI. So from the very beginning she knew that the flat had been purchased in the name of respondent/husband and she was a guarantor to the loan. Thus, there was no question of she being in dark about the name of the person in whom the title vested.

27. There is enough material on record that the parties were living happily till the parents of the appellant/wife shifted close to their house and regular interference by them in the personal affairs of the parties including ownership of the flat became an issue thereafter. The undertaking dated October 30, 2006 on a stamp paper duly notarised, which has been signed by the respondent/husband as deponent and by appellant/wife and her father Sh.Achal Singh, R/o Flat No.265, Sector-1, Pocket-1, Dwarka, New Delhi, is a glaring instance to withdraw this inference. The effort was by the respondent/husband to resolve the issue which also ultimately proved to be unsuccessful to sort out the differences.

28. The respondent/husband has proved on record the complaints made

against him by/at the instance of appellant/wife. The contents of the complaints so made to the authorities like compelling his wife to go for abortion, threatening to divorce her and remarry to have a male child, having affairs with Bengali girls in the vicinity and terming his as habitual gambler and drunkard, making complaints to CAW Cell has resulted in issuance of show cause notices which were duly proved and an inquiry into his alleged misconduct was initiated. It is a matter of record that all the complaints were found to be without any substance due to which no disciplinary action was taken against him. But definitely it had an adverse effect on his reputation and self esteem. The fact that before leaving home and shifting to a rented accommodation he had intimated the local police at PS Dabri vide DD No.50-B dated November 03, 2004 and DD No.26-B dated April 25, 2005 show that in case of any missing report he wanted to keep the police informed that he was alive but shifting from there to save himself from false implication/arrest at the behest appellant/wife/in-laws.

29. After leaving the home first time on November 03, 2004 he returned to save the marriage but the peace prevailed only for a few days and again when the situation became abnormal he left home on April 25, 2005 and did not return home thereafter. Till date he is living separately but in touch with his daughters.

30. Statement of Ms.Khyati Meena – eldest daughter of the parties who was examined as RW-1 in the years 2013 by the appellant/wife provides some insight into the family affairs of the parties. At the time of her examination she was nineteen years old and doing diploma in Electronics and Communication Engineering from Jyoti Vidyapeeth, Jaipur, Rajasthan since 2011. In her examination-in-chief by way of affidavit she had deposed

that:

- (i) She was a student of third year of Diploma in Electronics and Communication Engineering from Jyoti Vidyapeeth, Jaipur, Rajasthan.
- (ii) She had attended the last rites of her grandfather in the year 2003 and stayed there with her mother till *Tehravi* and she or her mother were not informed about the death of her grandmother.
- (iii) At the time of altercation between her parents she could judge that in the peaceful married life of her parents whenever the quarrel took place, her mother was not at fault and her father used to quarrel with her mother on 'petty issues' without any rhyme and reason.
- (iv) Her maternal grand-parents never interfered in the peaceful matrimonial life of her parents or stayed in their house.

31. During her cross examination she stated that her father has visited her at Jaipur approximately for about fifteen times and he comes to meet her almost every month. Her father brings gifts for her on every visit and had also recently purchased a mobile phone of her choice for her. The dispute between her parents was on account of 'misunderstanding'.

32. The eldest daughter of the parties who was 19 years old at the time of her examination before the Family Court and was 11 years old when her father left home second time in 2005 has repeatedly referred to the peaceful matrimonial life of her parents and stated that dispute was only on 'petty issues' due to misunderstanding. This demolishes the entire defence of the appellant/wife of she being subjected to cruelty by the respondent/husband on account of giving birth to three daughters and his desire to remarry to have a son or neglecting the daughters. This also proves that the contents of the complaint made against the respondent/husband were without any

substance which fact has been duly admitted by the appellant/wife in the written statement.

33. It would not be out of place to mention here that apart from the numerous complaints made to the various authorities, even in the written statement serious allegations have been made against the respondent/husband that he wanted to get rid of the appellant for the reason that he wanted to remarry and have a son whereas she had three daughters. None of these facts could be established from any material produced by the appellant. Rather from the record it appears that the respondent/husband had been taking due care of his daughters not only at that time but even after separating from his wife as is proved from the testimony of his eldest daughter RW-1 Ms.Khyati Meena who has stated that her father regularly visits her to her hostel in Jaipur and brings all kinds of gifts and also bought the mobile to her choice.

34. Legal position is well settled that making false complaints containing allegations of indecent behaviour and making defamatory allegations against the spouse, amounts to causing mental cruelty to the other spouse. The plea taken by the appellant/wife in the written statement that she did it all so that her husband comes back to her, is no explanation. In somewhat similar circumstances where false and defamatory complaints were made against the spouse to win him back was held to be amounting to causing mental cruelty to the husband.

35. In the decision reported as (2013) 5 SCC 226 K.Srinivas Rao vs. D.A.Deepa it was held as under:-

‘22. We need to now see the effect of the above events. In our opinion, the first instance of mental cruelty is seen in the

scurrilous, vulgar and defamatory statement made by the Respondent-wife in her complaint dated 4/10/1999 addressed to the Superintendent of Police, Women Protection Cell. The statement that the mother of the Appellant-husband asked her to sleep with his father is bound to anger him. It is his case that this humiliation of his parents caused great anguish to him. He and his family were traumatized by the false and indecent statement made in the complaint. His grievance appears to us to be justified. This complaint is a part of the record. It is a part of the pleadings. That this statement is false is evident from the evidence of the mother of the Respondent-wife, which we have already quoted. This statement cannot be explained away by stating that it was made because the Respondent-wife was anxious to go back to the Appellant-husband. This is not the way to win the husband back. It is well settled that such statements cause mental cruelty. By sending this complaint the Respondent-wife has caused mental cruelty to the Appellant-husband.'

36. There is complete breakdown of the marriage. Thus, the learned Judge Family Court was fully justified in passing a decree for dissolution of the marriage.

37. In our considered view in a case of this nature where though blessed with three daughters, there may be a hidden desire in the mind of the parties to have a son, the issue of giving birth to three daughters was never a cause of matrimonial discord. The daughters are being taken care of the respondent/husband by showering love and affection as can be inferred from the testimony of RW-1 Ms.Khyati Meena – eldest daughter of the parties who did not narrate any instance of she or her younger sisters being cursed, ignored or neglected in any manner by their father. The fact that despite the flat in Dwarka being owned by him, he preferred to shift in a rented accommodation to ensure that his wife and daughters could live in that house proves that he was a caring husband and father.

38. By shifting to a rented accommodation he tried to find peace for himself and also to save himself from the arrest or false implication on thereat being extended and given effect to by appellant/wife by making complaints to CAW Cell and other authorities.

39. In the given facts and circumstances, continuance of such marriage would itself amount to cruelty to the respondent/husband who has been granted a decree of divorce on the ground of cruelty envisaged under Section 13(1)(ia) of Hindu Marriage Act.

40. The appeal being without any merits is hereby dismissed.

41. No costs.

42. TCR be sent back alongwith copy of this order.

**PRATIBHA RANI
(JUDGE)**

**PRADEEP NANDRAJOG
(JUDGE)**

AUGUST 17, 2016
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